



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE CLEAN ENERGY PROGRAM)	ORDER
CUSTOMER ON-SITE RENEWABLE ENERGY (CORE))	
PROGRAM – REQUEST FOR EXTENSION OF)	
COMPLETION TIMEFRAME FOR EXISTING)	
COMMITMENT – NORTH HUDSON SEWERAGE)	
AUTHORITY)	DOCKET NO. EO09100829

Mr. Frederic Pocci, North Hudson Sewage Authority, 1600 Adams St., Hoboken, NJ 07030

BY THE BOARD:

By this Order, the Board of Public Utilities ("Board") considers and renders its decision regarding a request of the North Hudson Sewerage Authority ("NHSA") for an extension of its Customer On-site Renewable Energy ("CORE") rebate commitment deadline.

BACKGROUND

On April 6, 2004, the Office of Clean Energy ("OCE") issued a rebate approval letter to the NHSA for a 297 kW solar system to be installed at 1600 Adams Street in Hoboken, New Jersey. Application No. BPU-0295. The estimated rebate for the project was the lesser of \$1,153,750.00 or 60% of the installed system cost. By letter dated May 25, 2005, the OCE extended the NHSA's rebate approval expiration date to December 31, 2005. On April 21, 2006, the OCE granted the NHSA a second extension of the NHSA's CORE rebate commitment, under the original terms, to November 3, 2006. At the time of the grant of the second extension, the OCE stated that the installation of the NHSA solar system must be completed by November 3, 2006. Completion required that all final application paperwork was submitted to OCE, an interconnection application was filed with the Electric Distribution Company, and the CORE program inspection process was initiated by November 3, 2006. The extension letter stated that, if the project was completed after November 3, 2006, the project would receive a rebate at the level in effect when the project was completed.

In a letter dated November 1, 2006, the OCE responded to a request from the NHSA for a third extension. The OCE recognized that the NHSA project had made substantial progress toward completion, but noted that the second extension had been granted on the condition that the final application would be submitted by November 3, 2006. Consistent with the second extension letter, the OCE stated that it would issue a new approval letter for the NHSA project at the rebate levels in effect on November 3, 2006. The OCE's November 1, 2006 letter also stated

that, since the project was approved for 297 kW, the maximum rebate the project could now receive would be \$827,700, based on the rebate levels in effect on November 3, 2006. In other words, the NHSA's failure to complete its project by November 3, 2006 resulted in a new application that the OCE intended to approve at the lower rebate level in effect on November 3, 2006. Unfortunately, as discussed below, it appears that the new rebate approval letter was lost or never issued.

In January 2007, management of the CORE program was transferred from the OCE to Honeywell International Inc., the current Renewable Energy Market Manager. The NHSA submitted numerous letters to both the OCE and to the Renewable Energy Market Manager. These letters provided updates of the status of the project and outlined issues related to the completion of the project as well as the NHSA's process in obtaining a municipal inspection as required by the CORE program.

On March 27, 2007, a letter from the NHSA notified the OCE that the project was complete and had been fully operational since January 2007. However, the NHSA stated in its letter that on January 11, 2007, during the final inspection of the solar installation, it was informed that the Hoboken electrical inspector would not grant approval of the installation since the fire alarm system did not display the status of the individual solar power systems. The NHSA indicated that this new requirement had not been requested during the municipality's review and approval of NHSA's construction documents. The NHSA requested that the OCE perform its inspection of the project and proceed with acceptance of the solar system so that the NHSA could receive the CORE rebate and receive solar renewable energy credits. Furthermore, by March 27, 2007, management of the CORE program had transferred from the OCE to the Renewable Energy Market Manager. Also, as noted above, due to an inadvertent oversight during the transition of the CORE program, the NHSA's new approval letter (granting it a rebate at the November 3, 2006 level as stated in the OCE's letter) was never issued. As a result of this unfortunate oversight, the Renewable Energy Market Manager did not perform the inspections requested by the NHSA letter, because the only issued rebate approval for the NHSA project had expired.

On September 16, 2008, the NHSA filed a formal petition with the Board for an extension of time to complete construction of the solar energy system and to reinstate the project rebate and payment of the rebate. The NHSA stated that a contract was entered into on March 8, 2006. On June 28, 2006, zoning approval was granted by Hoboken and, on August 28, 2006, the construction permits were issued by Hoboken, which allowed construction to begin. The NHSA stated that as a result of delays in obtaining zoning approval and construction permits, the contract substantial completion date of October 4, 2006 could not be met. Therefore, the date within which construction was to be completed in order to obtain the CORE rebate at the original level, November 3, 2006, also expired.

In its petition, the NHSA notes that numerous letters were sent to the Renewable Energy Market Manager, the OCE, and the Board requesting that the Board waive the requirement for local approval and proceed with its independent review of the final application. The letters noted the difficulties the project was having in obtaining the local approvals and the steps that the NHSA was taking to address the issues raised by Hoboken officials. Again, the Renewable Energy Market Manager did not perform the inspection, because the rebate approval deadline had passed.

On February 29, 2008, Hoboken issued its approval of the system. By letter dated March 6, 2008, the NHSA notified the Renewable Energy Market Manager that Hoboken had issued its final approval and requested an extension of the rebate commitment deadline to February 29,

2008, the date of Hoboken's approval. The Renewable Energy Market Manager does not have the authority to grant extensions to projects that miss their rebate approval deadline. Therefore, the NHSA petitioned the Board for relief.

STAFF RECOMMENDATION

The NHSA has documented delays in obtaining final approvals from the City of Hoboken. The project was completed and operational as of January 11, 2007, but the CORE program requires submittal of an approved final inspection from local construction officials prior to payment of a rebate. The NHSA has documented the reasons it was unable to obtain the final approval from Hoboken. The NHSA has also documented that it diligently pursued Hoboken's final approval despite the difficulties it faced. Thus, the OCE believes that the NHSA has demonstrated that it took reasonable steps to complete the project and to obtain the required local approvals.

The OCE also believes that the Board should consider the second rebate approval letter that was never issued. If the second rebate approval letter, which was intended to grant the NHSA a rebate at the November 3, 2006 level, had issued, the NHSA would have had 12 months from the date of the new rebate approval letter to submit final application paperwork, according to the terms of the CORE program in effect at that time. Assuming the second approval letter had issued in November 2006, the NHSA would have had until November 2007 to complete its project. As discussed above, the NHSA's project was completed on January 11, 2007 and the only delay was the final approval from the City of Hoboken, which was received in February 2008. Had the second approval letter issued, the CORE program would have allowed a one year extension of the new rebate approval deadline of November 2007 provided that the project met the standards for an extension. If the NHSA was granted an extension of the second approval letter from November 2007 to November 2008, the NHSA would have been able to submit the final application paperwork well before its CORE rebate approval expired. Following this reasoning, it appears that, but for the inadvertent failure to issue the new rebate approval letter, the NHSA would have been eligible for a maximum rebate of \$827,700.

Therefore, the OCE recommends that the Board authorize the Renewable Energy Market Manager to process a final application from the NHSA for this project. The OCE recommends that the rebate be calculated based on the rebate levels in place on November 3, 2006 as stated in the November 1, 2006 letter from the OCE. This recommendation would result in a maximum rebate of \$827,700 for this 297 kW system. The OCE also recommends that the NHSA be given 60 days from the date of this Order to submit a final application and all required documentation.

DISCUSSION AND FINDINGS

This matter relates to a rebate under the CORE program, which was designed to support the sustained and orderly development of markets for distributed renewable electric generation in New Jersey. The program offered financial incentives to New Jersey public utility customers investing in eligible, on-site renewable electricity generation using photovoltaic, wind, biomass, and fuel cell systems. Rebates were offered to make renewable energy investments more cost-effective by offsetting a portion of the initial installation cost as well as a number of market support services, including inspections and the facilitation of registration for renewable energy credits. CORE rebates were not intended to cover the entire system cost; rebates were intended to reduce the installation cost in order to make cost-effective investments available for as wide an array of ratepayers as possible.

In a letter dated November 1, 2006, the OCE stated that it would reissue a new approval letter for the NHSA project at the rebate levels in place on November 3, 2006. The NHSA's failure to complete its previously approved project by November 3, 2006 effectively resulted in a new application for its solar project. The OCE's November 1, 2006 letter informed the NHSA that, since the project had been approved for 297 kW, the project would now receive a second approval letter for a maximum rebate of \$827,700, based on the rebate levels in place on November 3, 2006. That second approval letter was unfortunately lost or never issued.

The CORE Program Guidelines ("Guidelines"), the policy in effect when the NHSA should have received its second approval letter, state that all public projects over 10 kW in size will be given twelve calendar months, starting from the date on the rebate approval letter, for project completion, which is defined as the date when the Renewable Energy Market Manager receives the final rebate application. Customer On-site Renewable Energy (CORE) Program Update, 14 (Aug. 17, 2006). If the customer/contactor, the NHSA in this case, cannot complete the project within the initial twelve month period, that customer/contractor may request an extension. Ibid. Extension applications "must include detailed documentation regarding the reasons for delay." Ibid.

The Guidelines state that the Renewable Energy Market Manager will grant extensions when the applicant can document significant progress toward completion of the project and the delay was unavoidable and unforeseeable at the time of the rebate application. Id. at 13-14. In determining whether significant progress has been made, the Renewable Energy Market Manager looks at a number of factors: whether physical construction has started at the customer's site; whether irrevocable orders have been placed with manufacturers of the major items of equipment; whether construction permits have been approved; whether engineering and design work has started and progressed to a significant degree; and whether material has been received from the manufacturer (either on-site or in storage). Ibid. In addition to these factors, when the applicant is a public entity, the Renewable Energy Market Manager will also consider "procurement (i.e. customer contracting) and/or related litigation delays." Id. at 14. If granted, the initial extension would be for twelve calendar months. Ibid.

Here, the NHSA has petitioned the Board for an extension of time to complete construction of the solar energy system and for reinstatement of the CORE rebate. The NHSA was informed by the OCE that its previously approved project would be reconsidered at the rebate levels in effect on November 3, 2006, a maximum of \$827,700 for a 297 kW solar system. The OCE represented that the NHSA would receive a new approval letter stating that amount. The Board believes that the intent of the OCE's November 1, 2006 letter should be honored. That is, the NHSA should not be penalized due to the fact that the second rebate approval letter was lost or never issued. Therefore, the Board **HEREBY FINDS** that the NHSA effectively reapplied for a CORE program rebate for its 297 kW solar system on November 3, 2006 such that it would have been eligible for the rebate levels in place on that date, or a maximum rebate of \$827,700. The Board **FURTHER FINDS** that the NHSA should have received a rebate approval letter dated November 3, 2006, which would have included, among other things, a deadline of November 3, 2007.

The policy in place on November 3, 2006 allowed for a one year extension if the NHSA documented unavoidable and unforeseen delays. The Board has found that the NHSA project should have received a rebate approval letter with a deadline of November 3, 2007. The project was completed and operational on January 11, 2007. On March 27, 2007, a letter from the NHSA notified the OCE that the Hoboken electrical inspector would not grant approval of the installation since the fire alarm system did not display the status of the individual solar power

systems. The NHSA indicated that this requirement had not been requested during the City of Hoboken's review and approval of the NHSA's construction documents. The Board **HEREBY FINDS** that the installed and operational solar system shows significant progress toward completion of the project and the letter from the NHSA reveals that the delay was unavoidable and unforeseeable at the time of the rebate application. Therefore, consistent with the CORE program policies in effect on November 3, 2006, the Board **FURTHER FINDS** that the NHSA project should have received a one year extension to November 3, 2008.

On February 29, 2008, Hoboken issued its approval of the system, well before the November 3, 2008 deadline. However, since the Renewable Energy Market Manager did not have the second rebate approval letter, it did not accept the NHSA's final application paperwork nor did it inspect the solar installation. The Board has found that the NHSA should have received a rebate approval letter dated November 3, 2006 and the Board has found that the NHSA project should have received an extension to November 2008.

In light of the foregoing, the Board **HEREBY ORDERS** the Renewable Energy Market Manager to process a final application from the NHSA, which shall be submitted by the NHSA within 60 days of the date of this order. The Board **HEREBY DIRECTS** the Renewable Energy Market Manager to issue a rebate based on the rebate levels in effect on November 3, 2006, provided that all CORE program requirements are met.

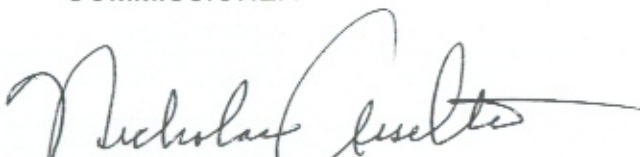
DATED: 10/28/09

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT



FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

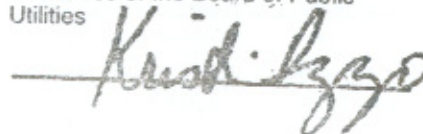

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



**IN THE MATTER OF THE CLEAN ENERGY CUSTOMER ON-SITE RENEWABLE ENERGY
(CORE) PROGRAM – REQUEST FOR EXTENSION OF COMPLETION OF TIMEFRAME FOR
EXISTING COMMITMENT – NORTH HUDSON SEWERAGE AUTHORITY**

DOCKET NO. EO09100829

SERVICE LIST

Michael Winka, Director
Office of Clean Energy
Board of Public Utilities
P.O. Box 350
Trenton, New Jersey 08625-0350

Benjamin Scott Hunter, Research Scientist
Office of Clean Energy
Board of Public Utilities
P.O. Box 350
Trenton, New Jersey 08625-0350

Allison E. Mitchell, Admin. Analyst
Office of Clean Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Cynthia L.M. Holland, DAG
Division of Law
Dept. of Law & Public Safety
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101

Kenneth Sheehan, Section Chief
Division of Law
Dept. of Law & Public Safety
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101

Charlie Garrison
New Jersey's Clean Energy Program™
c/o Honeywell, Inc.
145 Route 46 West
Wayne, NJ 07470

Tammy Gray
Senior Operations Specialist
New Jersey's Clean Energy Program™
75 Lincoln Highway, Suite 100
Iselin, NJ 08830

Joseph Carpenter
NJDEP
P.O. Box 409
401 East State Street
Trenton, NJ 08625-0409

Mr. Frederic Pocci
North Hudson Sewage Authority
1600 Adams St.
Hoboken, NJ 07030

Suzanne Dice-Goldberg, Legal Specialist
Office of Chief Counsel
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102